

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13726, of Hessick Investment Co., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the loading platform requirements (Sub-section 7301.1) and the loading berth requirements (Sub-section 7302.1) for a proposed new office building in a C-4 District at the premises 1710 Rhode Island Avenue, N.W., (Square 160, Lot 36).

HEARING DATE: May 19, 1982  
DECISION DATE: June 2, 1982

FINDINGS OF FACT:

1. The property is located in the triangular square bounded on the north by Rhode Island Avenue, N.W., on the east by 17th Street, on the south by M Street and on the west by the confluence of Rhode Island Avenue and M Street. The property is known as premises 1710 Rhode Island Avenue, N.W. It is in a C-4 District.
2. The subject lot is a through lot extending from Rhode Island Avenue south to M Street. The M Street frontage is approximately twenty-two feet wide and this narrow part extends fifty feet north from M Street. The lot then widens out to forty-seven feet and this wider part extends 120 feet to the south side of Rhode Island Avenue. The lot has an irregular shape.
3. The lot is unimproved.
4. The entire western boundary of the lot borders a large office building. The northern part of the east boundary borders a north-south alley which is eleven feet wide and the southern part of the east boundary borders a residential-type building which is in place and occupied. The applicant has been unsuccessful in its attempts to purchase said lot to increase the size of the subject lot.
5. The applicant proposes to construct an office building containing 41,982.6 square feet of rental space. The structure will cover 100 percent of the lot. The building will have two sections, the narrow part at the south end opening onto M Street and the wider part at the north end opening onto Rhode Island Avenue. The ground area of the M Street section is 1100 square feet and that of the Rhode Island Avenue section is 3115 square feet. The narrow

M Street section of the building will have only a ground floor and one floor above it, while the Rhode Island Avenue section will have a lower level, a ground floor and eleven stories above it. The applicant testified that the reason for the low height of the M Street section is that the small area and the requirement of a corridor on each floor precludes office use and therefore makes it un-economic to build more floors on this section.

6. The applicant purchased the property in January, 1981. At the time, the applicant also bought the construction plans for which a building permit had been issued. The construction plans provided for a loading platform and loading berth.

7. The applicant subsequently submitted revised plans to the Zoning Administrator eliminating the loading platform and berth. The applicant now seeks a variance from these requirements.

8. Article 73 of the Zoning Regulations requires that all new structures shall be provided with at least one loading berth and loading platform. The number of berths and platforms required is set forth in Sub-section 7302.1, and depends on the type of building, the zoning district and the number of square feet of gross area in the building. The proposed building is an office building located in the C-4 zoning district, and has 41,982.6 square feet of gross floor area. One loading berth and one loading platform are therefore required by Sub-section 7302.1. Sub-section 7305.1 of the Regulations requires the loading berth to have vehicular access to a street or alley.

9. The original construction plans that were approved by the Zoning Administrator provided for a loading berth and platform on the M Street frontage. The loading berth and platform occupied the entire ground floor area of the M Street section except for a door opening to M Street and stairs leading to the floor above. With the loading berth and platform in place the area to the rear would not be available for rental and would be used as the building manager's office.

10. The office building to the west of the applicant's property has a loading berth immediately adjacent to the subject site. The rest of the M Street frontage of this building is a series of retail stores. Along the east line of the alley is the office building of the American Psychological Association. This building has a large entrance for underground automobile parking adjacent to the alley, and its loading berth and platform are on the alley itself. This building is in the SP zoning district.

11. The applicant testified that if the application is granted, the applicant will provide a 6.5 foot wide and 23.5 feet long corridor within the building and a trash collection room leading to the alley, and this corridor will be used for delivery and removal of office furniture and supplies and for trash removal. The applicant testified that the alley is already used for these purposes. The loading berth and platform and the means for trash removal of the building of the American Psychological Association, which borders the entire east side of the alley, are located on the alley. The applicant further argued that the alley has very little use. The applicant has been permitted by the D.C. Government on several occasions during site preparation and construction to use the alley temporarily. The Board finds that the applicant's arguments about the proposed use of the alley are without merit. This is a public alley that is not to be used for private purposes. The public alley is not a substitute for a loading berth although there may be misuse of the alley by other parties who are not now before the Board. The Board finds that a private use of a public alley has a potential detrimental effect.

12. The applicant's architect testified that he had attempted to redesign the ground floor of the proposed office building by redesigning retail space for that part of the building facing M Street relocating the loading adjacent to the alley. His study of the matter showed that it would not be possible to use the alley solution. The alley is narrow and the District of Columbia will not approve a loading berth on an alley if it is not possible for a truck to back into the loading berth. This would not be possible in the proposed building because of the narrow width of the alley. The architect also studied the possibility of giving the loading berth access to Rhode Island Avenue and came to the conclusion that this location would require a complete disruption of the planned structural members of the building and would be prohibitively expensive.

13. The applicant's real estate expert testified that the provision of a loading berth and platform will make the M Street facade of the building unattractive and in his opinion will adversely affect the probable income from the upper floor of the M Street section. If the loading berth and platform are provided, it was his opinion that the highest and best use of this floor would be for bulk storage or very low grade office use. Such use would result in a total probable annual rent of \$12,337.

14. The expert further argued that if the loading berth and platform are not required, the ground floor becomes very attractive for retail rental and, in addition, the manager's office area to the rear can be rented with the

front area for retail use. Under these conditions the probable annual income of the M Street section of the building would be \$59,782.

15. The expert noted that if the loading berth and platform are not required another possibility is opened up. The Rhode Island Avenue ground level is thirty inches above the level at M Street and it is proposed that the ground floor be at the Rhode Island Avenue level, thus permitting an English basement at M Street below the ground floor level. This English basement would have an area of 949 square feet and would be available for retail rental. The probable income of the M Street section of the building if this English basement space is available would be \$81,614.

16. The Dupont Circle Citizens Association oppose the application on the grounds that the applicant had not met the burden of proof that would sustain the variances requested. The Association further argued that the applicant's case is based on an economic hardship. The Dupont Circle Citizens Association also argued that the Board cannot isolate the subject property but must consider the subject site's relationship to the entire square such as the future development on the abutting streets where loading berths and platforms would be an issue, traffic impact, and the use of alleys for fire vehicles, trash pickup and deliveries. The Board concurs with the DCCA that the applicant has not met its burden of proof as to the practical difficulty issue. As to the other concerns of the DCCA, the Board as stated in the past, will consider each application on its own merits. In such other situation as may occur, the potential impact on the neighborhood will be considered.

17. Advisory Neighborhood Commission 2B made no recommendation on the application.

18. After the close of the Public Hearing and prior to the Board's decision the applicant filed a Motion requesting the Board to consider the subject application for variances from the dimension and area requirements for a loading berth and platform rather than a variance for the elimination of a berth or platform. A revised plan was submitted and marked as Exhibit No. 21 of the record. The revised plan evidences the ground floor of the proposed building with a loading berth opening on M Street. The loading berth is ten feet wide and twenty feet deep instead of twelve feet wide and twenty foot deep. The area of the loading platform is forty square feet instead of 100 square foot. The Board for reasons discussed in its Conclusions of Law, finds no more merit for variances of the lesser degree than the complete exception from the zoning requirements originally requested.

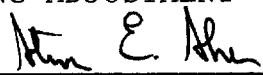
CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking area variances the granting of which requires proof of a practical difficulty inherent in the property itself. The applicant must also establish that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zone Plan. The Board concludes that there is no practical difficulty inherent in the site itself. The site is undeveloped. Construction plans that conformed to the Zoning Regulations and required no variances had been approved by the Zoning Administrator's office. The practical difficulty arising from the applicant's revised plans are based on economic reasons not on any difficulty inherent in the land itself. The Board further concludes that the relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zone Plan. The Board again notes that the site is vacant. There is no existing impairment which would make conformance with the Zoning Regulations unduly restrictive or burdensome. It is a question of design from the first stage. The Board further notes Finding of Fact No. 11, the applicant's testimony about the use of public alleys. The Board has no jurisdiction over public alleys. Public alleys are reserved for public use, not private use. While a public alley may be closed from time to time to accommodate a builder such is a temporary measure. Public alleys in use are maintained for the public safety and health. The fact that some of the alleys receive little use does not relegate them to private use only. Little use is no alternative to the Zoning requirements for a loading berth and platform. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (Walter B. Lewis, Connie Fortune and Charles R. Norris to deny, William F. McIntosh opposed by proxy, Douglas J. Patton not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: DEC - 3 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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